Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

October Term, 1979
No. 8, Original

STATE OF ARIZONA,
Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, and COUNTY OF SAN DIEGO,
Defendants,

UNITED STATES OF AMERICA and STATE OF NEVADA,
Intervenors,

STATE OF NEW MEXICO and STATE OF UTAH,
Impleaded Defendants.

MEMORANDUM OF THE COLORADO RIVER INDIAN TRIBES IN OPPOSITION TO THE MOTION OF THE STATES OF ARIZONA, CALIFORNIA AND NEVADA AND OTHER CALIFORNIA DEFENDANTS FOR LEAVE TO FILE EXCEPTIONS TO THE MEMORANDUM AND REPORT OF SPECIAL MASTER ELBERT P. TUTTLE AND FOR STAY ORDER.

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On August 28, 1979, Special Master Elbert P. Tuttle mailed to the Clerk of the Supreme Court for filing a Memorandum and Report on Preliminary Issues, together with notice thereof to all parties. Almost three months later, the State Parties have served the Colorado River Indian Tribes (hereinafter "Tribes") with their Motion

for Leave to File Exceptions to the Memorandum and Report of Special Master Elbert P. Tuttle and for Stay Order; Exceptions; and Opening Brief of Said Parties in Support of Their Motion and Exceptions (hereinafter "the Motion"). The Motion is based upon each and every substantive argument presented to the Court prior to referral to the Special Master. Since the parties are currently in the midst of the proceedings before the Special Master, the Tribes object to the Motion as being premature. Moreover, the Tribes respectfully submit that the Motion is untimely and prejudicial to them.

I. THE MOTION IS UNTIMELY AS MEASURED BY RULE 53 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

The Tribes recognize that the decision of the Court to dismiss or entertain the Motion of the State Parties is not dictated by normal rules of civil procedure. It is helpful, however, to refer to the Federal Rules of Civil Procedure, which serve as guidelines to the conduct of diligent, responsible jurisprudence.

Rule 53 (e) of the Federal Rules provides that a party may serve upon the other parties written objections to a master's report within ten days after notice of filing of the report. The objecting party is subsequently allowed to make application to the court by motion for action on the report and any objections thereto. This procedure comports with the principle common to appellate procedures at all levels that written objection to a judgment or order be made within a relatively short period of time in order to prevent unnecessary and unjust delay and prejudice to other parties involved.

It was not necessary for the State Parties to prepare elaborate pleadings for the purpose of notifying opposing parties, including the Tribes, of their intention to file ex-

ceptions to the Special Master's Memorandum and Report. However, if they wished to attempt to obtain review at this stage of the proceedings, the State Parties should have elected to make their exceptions to the Memorandum and Report and given notice thereof to the opposing parties within a reasonable period of time. Whether measured by the ten day period specified in Rule 53 or a standard of reasonableness, the State Parties in these circumstances have failed to timely serve the Tribes and other opposing parties with written objections to the Memorandum and Report. The Motion of the state parties therefore should be denied.

II. THE MOTION IS INCONSISTENT WITH PRIOR CONDUCT OF THE STATE PARTIES AND CONSEQUENTIALLY PREJUDICIAL TO THE TRIBES.

Prior to service of the Motion upon the Tribes, the State Parties indicated that they were pursuing preparation for trial before the Special Master. During that period of time the State Parties never suggested that the proceedings should be delayed or deferred for filing of objections to Special Master Tuttle's Memorandum and Report.[1] In fact, there has been extensive discussion between parties concerning establishment of a trial schedule and pre-trial procedure, and a schedule was agreed to, which resulted in the Special Master issuing a pre-trial schedule dated November 7, 1979. It included a deferred trial setting requested by the State Parties. In addition, during this period of time the State Parties requested and obtained per-

[1] The only indication to the Tribes that the state parties *might* file exceptions to the Report was by reference to a copy of the letter of Douglas B. Noble, Deputy Attorney General for the State of California, to Special Master Tuttle, dated October 31, 1979, in which Mr. Noble states that, "And while we continue our consideration of filing exceptions to your Report with the Supreme Court, as noted in our letter of September 19, we do not do so at the expense of preparation for trial."

mission and established a schedule to inspect the Reservation of the Tribes in preparation for trial, and that inspection has been conducted.

Prior to the preliminary findings of the Special Master as incorporated in his Memorandum and Report, the limited resources of the Tribes dictated that they refrain from extensive trial preparation until it was known whether they could actively participate. However, after the Memorandum and Report was filed, the Tribes undertook efforts and incurred expenses directed toward trial. Obviously, granting of the Motion at this unreasonably delayed juncture of the proceedings before the Special Master could result in unnecessary and unfair waste of the Tribes' resources. Sound and orderly jurisprudence would seem to dictate in these circumstances that the Motion of the State Parties should be denied.

III. THE REQUEST OF THE STATE PARTIES FOR REVIEW IS PREMATURE AND INAPPROPRIATE.

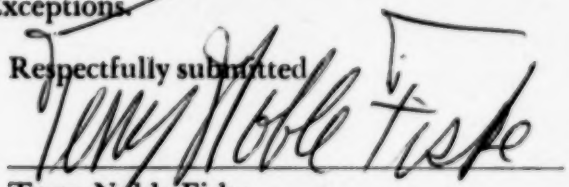
After extensive briefing and oral argument on the merits, the Court referred this matter to the Special Master. After further briefing and hearing, the Special Master filed his preliminary report on various issues. The State Parties have taken this opportunity to restate in the present Motion each and every argument previously presented to the Court without awaiting the final report of the Special Master. The attempt of the State Parties to have this Court preempt the Special Master at this early phase of the proceedings can only result in delay, confusion and waste of resources. The piecemeal approach of the State Parties should therefore be rejected. The State Parties will each have an opportunity to file exceptions to a final report of the Special Master.

CONCLUSION

The Tribes respectfully submit that there are two equally important reasons for denial of the Motion of the State Parties. First, the Motion and notice thereof are untimely and result in harsh, unwarranted prejudice to the Tribes. Second, an appeal of the interlocutory findings of the Special Master is premature and not in accordance with sound procedure. The posture of the Tribes is not to preclude eventual review of a final report of the Special Master but to assure prudent, orderly resolution of this matter. For these reasons we respectfully urge the Court to deny the Motion for Leave to File Exceptions and for Stay Order.

The Tribes also concur with and support the Memorandum for the United States in Opposition to Motion for Leave to File Exceptions.

Respectfully submitted,



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